

## PATENT COOPERATION TREATY

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## PCT

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INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY  
(Chapter II of the Patent Cooperation Treaty)

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(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 08831-007 ✓	FOR FURTHER ACTION		See Form PCT/IPEA/416
International application No. PCT/CA2004/001851	International filing date (day/month/year) 21 October 2004 (21-10-2004)	Priority date (day/month/year) 23 October 2003 (23-10-2003)	
International Patent Classification (IPC) or national classification and IPC IPC(7): A61M 16/00, A61H 31/02			
Applicant MAQUET CRITICAL CARE AB ET AL			
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of <u>5</u> sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p style="margin-left: 40px;">a. <input type="checkbox"/> (sent to the applicant and to the International Bureau) a total of _____ sheets, as follows:</p> <p style="margin-left: 80px;"><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p style="margin-left: 80px;"><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. 1 and the Supplemental Box.</p> <p style="margin-left: 40px;">b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in electronic form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>			
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the report</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input checked="" type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input checked="" type="checkbox"/> Box No. VIII Certain observations on the international application</p>			
Date of submission of the demand 17 August 2005 (17-08-2005)		Date of completion of this report 29 September 2005 (29-09-2005)	
Name and mailing address of the IPEA/CA Canadian Intellectual Property Office Place du Portage I, C114 - 1st Floor, Box PCT 50 Victoria Street Gatineau, Quebec K1A 0C9 Facsimile No.: 001(819)953-2476		Authorized officer  Eric Lafontaine (819) 956-9965	

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.  
PCT/CA2004/001851**Box No. I Basis of the report**

1. With regard to the **language**, this report is based on:
- ☒ the international application in the language in which it was filed
- ☐ a translation of the international application into \_\_\_\_\_, which is the language of a translation furnished for the purposes of:
- ☐ international search (Rules 12.3(a) and 23.1(b))
- ☐ publication of the international application (Rule 12.4(a))
- ☐ international preliminary examination (Rules 55.2(a) and/or 55.3(a))
2. With regard to the **elements** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:
- ☐ the international application as originally filed/furnished
- ☒ the description:
- ☒ pages 1 to 20 \_\_\_\_\_ as originally filed/furnished
- ☐ pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_
- ☐ pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_
- ☒ the claims:
- ☐ pages \_\_\_\_\_ as originally filed/furnished
- ☐ pages\* \_\_\_\_\_ as amended (together with any statement) under Article 19
- ☒ pages\* 21 to 32 (claims 1 to 49) received by this Authority on 17 August 2005 (17-08-2005)
- ☐ pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_
- ☒ the drawings:
- ☒ pages 1/6 to 6/6 \_\_\_\_\_ as originally filed/furnished
- ☐ pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_
- ☐ pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_
- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing.
3. ☒ The amendments have resulted in the cancellation of:
- ☐ the description, pages \_\_\_\_\_
- ☒ the claims, Nos. 1 to 50
- ☐ the drawings, sheets/figs \_\_\_\_\_
- ☐ the sequence listing (*specify*): \_\_\_\_\_
- ☐ any table(s) related to sequence listing (*specify*): \_\_\_\_\_
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages \_\_\_\_\_
- ☐ the claims, Nos. \_\_\_\_\_
- ☐ the drawings, sheets/figs \_\_\_\_\_
- ☐ the sequence listing (*specify*): \_\_\_\_\_
- ☐ any table(s) related to sequence listing (*specify*): \_\_\_\_\_

\* If item 4 applies, some or all of those sheets may be marked "superseded."

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.  
PCT/CA2004/001851**Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability**

The question whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application

☒ claims Nos. 1 to 21

because:

☒ the said international application, or the said claims Nos. 1 to 21

relate to the following subject matter which does not require an international preliminary examination (*specify*):

The claims are considered to be directed to a method of medical treatment, which the International Search Authority is not required to search under PCT Article 17(2)(a)(i) and PCT Rule 39.1(iv).

☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos.  
are so unclear that no meaningful opinion could be formed (*specify*):

☐ the claims, or said claims Nos. are so inadequately supported  
by the description that no meaningful opinion could be formed (*specify*):

☒ no international search report has been established for said claims Nos. 1 to 21

☐ a meaningful opinion could not be formed without the sequence listing; the applicant did not, within the prescribed time limit:

☐ furnish a sequence listing on paper complying with the standard provided for in Annex C of the Administrative Instructions, and such listing was not available to the International Preliminary Examining Authority in a form and manner acceptable to it.

☐ furnish a sequence listing in electronic form complying with the standard provided for in Annex C of the Administrative Instructions, and such listing was not available to the International Preliminary Examining Authority in a form and manner acceptable to it.

☐ pay the required late furnishing fee for the furnishing of a sequence listing in response to an invitation under Rules 13ter.1(a) or (b) and 13ter.2.

☐ a meaningful opinion could not be formed without the tables related to the sequence listings; the applicant did not, within the prescribed time limit, furnish such tables in electronic form complying with the technical requirements provided for in Annex C-bis of the Administrative Instructions, and such tables were not available to the International Preliminary Examining Authority in a form and manner acceptable to it.

☐ the tables related to the nucleotide and/or amino acid sequence listing, if in electronic form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.

☐ See Supplemental Box for further details.

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.  
PCT/CA2004/001851**Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement****1. Statement**

Novelty (N)	Claims	<u>22 to 49</u>	YES
	Claims	<u>none</u>	NO
Inventive step (IS)	Claims	<u>22 to 49</u>	YES
	Claims	<u>none</u>	NO
Industrial applicability (IA)	Claims	<u>22 to 49</u>	YES
	Claims	<u>none</u>	NO

**2. Citations and explanations (Rule 70.7)****I. Novelty:**

The combination of features disclosed in claims 22 to 49 are considered to be novel as no reference disclosed all the elements and limitations of the claimed devices. The subject matter of claims 22 to 49 therefore complies with PCT Article 33(2).

**II. Inventive Step:**

The combination of features disclosed in claims 22 to 49 is not disclosed in the available prior art and involves an inventive step over the available prior art. The subject matter of claims 22 to 49 therefore complies with PCT Article 33(3).

**III. Industrial applicability:**

The claimed subject matter of claims 22 to 49 is considered to be industrially applicable and thus fulfilling the requirements of PCT Article 33(4).

For the assessment of present claims 1 to 21, which are directed towards a method of medical treatment, under Rule 43bis1(a)(i) and Article 33(4) PCT on whether they are industrially applicable, no unified criteria exists in the PCT.

**Box No. VIII** Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

The incorporations by reference on page 6, line 13 and page 13, line 25 do not comply with Article 5 of the PCT, because the description shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art without referring to other documents.